

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

NICOLAS FELIX,
#89643,

Petitioner,

vs.

E.K. MCDANIEL, *et al.*,

Respondents.

3:09-cv-00483-LRH-RAM

ORDER

This habeas matter comes before the Court on petitioner's second application (#6) to proceed *in forma pauperis*.

By an order (#5) entered on September 23, 2009, the Court denied petitioner's first application to proceed *in forma pauperis*. The order expressly found: "Considering the materials submitted, the Court finds that petitioner is able to pay the filing fee of five dollars (\$5.00)." The order gave petitioner thirty days within which to pay the filing fee. The order further stated: "Failure to timely comply with this order will result in the dismissal of this action without further advance notice."

Petitioner did not timely pay the filing fee.

Petitioner instead has submitted the second application that now is before the Court. Once again, the financial materials submitted with the motion clearly show that petitioner has more than enough funds with which to pay the \$5.00 filing fee. Both the financial certificate and the inmate account statement show a current account balance of \$202.37, an average monthly balance of \$155.12, and average monthly deposits exceeding \$10.00 per month.

1 Petitioner must pay the \$5.00 filing fee, as directed by the prior order and now by this order.
2 If petitioner again fails to timely pay the filing fee, this action will be dismissed without further advance
3 notice to petitioner. Petitioner cannot avoid dismissal of this action for nonpayment of the filing fee
4 by again filing another application to proceed *in forma pauperis*. This is the last chance that petitioner
5 will have to timely pay the filing fee and avoid dismissal.

6 The allegedly non-English-speaking petitioner states in his papers – in English – that he needs
7 appointment of counsel to help him prepare his petition in legal terms that can be understood by the
8 Court. Petitioner has shown a sufficient ability to communicate in English in his filings to be able to
9 comply with the Court's orders directing him to pay the filing fee. See, e.g., #6-3, at 5-6. No action
10 will be taken in this action, including possible appointment of counsel, unless and until petitioner first
11 pays the filing fee. If petitioner does not timely pay the filing fee, the action will be dismissed.

12 Petitioner also has submitted with the second application another petition that is almost entirely
13 the same as the prior petition. The main change in the second petition is that petitioner has written a
14 new date over the date of the first petition.

15 Petitioner does not need to keep sending the same petition to the Court. Petitioner needs to
16 timely pay the filing fee.

17 Sending the same paperwork a second time after the Court has issued an order will not lead to
18 a different result the second time. Instead, sending the same paperwork to the Court and ignoring a
19 prior order will result in the action being dismissed.

20 IT THEREFORE IS ORDERED that the application (#6) to proceed *in forma pauperis* is
21 DENIED. Petitioner shall have thirty (30) days from entry of this order within which to have the filing
22 fee of five dollars (\$5.00) sent to the Clerk of Court. **Failure to timely pay the \$5.00 filing fee will**
23 **result in dismissal of this case. This is the final notice that petitioner will receive prior to**
24 **dismissal of this case.**

25 DATED this 3rd day of November, 2009.



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LARRY R. HICKS
UNITED STATES DISTRICT JUDGE